

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="43"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2020"/> - * <input type="text" value="021"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by Cboe EDGX Exchange, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The Exchange proposes to adopt Rule 14.12 to permit the trading, pursuant to unlisted trading privileges, of Exchange-Traded Fund Shares.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * <input type="text" value="Sarah"/>	Last Name * <input type="text" value="Tadtman"/>
Title * <input type="text" value="Counsel"/>	
E-mail * <input type="text" value="stadtman@cboe.com"/>	
Telephone * <input type="text" value="(913) 815-7203"/>	Fax <input type="text"/>

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date <input type="text" value="05/07/2020"/>	Vice President, Associate General Counsel
By <input type="text" value="Kyle Murray"/> (Name *)	<input type="text"/>

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to adopt Rule 14.12 to permit the trading, pursuant to unlisted trading privileges, of Exchange-Traded Fund Shares, which are shares of stock issued by an exchange-traded fund as defined in Rule 6c-11 (“Rule 6c-11”) under the Investment Company Act of 1940 (the “1940 Act”).³ Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Exchange-Traded Fund Shares and proposed Rule 14.12, where applicable. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on April 29, 2020.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, Counsel, (913) 815-7203.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 80a-1.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to adopt Rule 14.12 to permit the trading, pursuant to unlisted trading privileges (“UTP”), of Exchange-Traded Fund (also referred to as “ETF”) Shares,⁴ which substantially conforms to Cboe BZX Exchange, Inc. (“BZX”) Rule 14.11(l).⁵ Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Exchange-Traded Fund Shares and proposed Rule 14.12, where applicable.

The Exchange does not currently list any securities as a primary listing market. Consistent with this fact, Exchange Rule 14.1(a) currently states that all securities traded on the Exchange are traded pursuant to UTP and that the Exchange will not list any securities before first filing and obtaining Commission approval of rules that incorporate qualitative listing criteria and comply with Rules 10A-3⁶ (“Rule 10A-3”) and 10C-1⁷ (“Rule 10C-1”) under the Act. Therefore, the provisions of existing Rules 14.2 through 14.9, 14.11, and

⁴ ETF Shares means shares of stock issued by an Exchange-Traded Fund. See proposed Rule 14.12(c)(1).

⁵ See Securities and Exchange Act Release No. 88566 (April 6, 2020) 85 FR 20312 (April 10, 2020) (SR-CboeBZX-2019-097) (the “BZX Approval Order”).

⁶ Rule 10A-3 obligates the Exchange to prohibit the initial or continued listing of any security of an issuer that is not in compliance with certain required standards. See 17 CFR 240.10A-3.

⁷ Rule 10C-1 obligates the Exchange to establish listing standards that require each member of a listed issuer’s compensation committee to be a member of the issuer’s board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director. See 17 CFR 240.10C-1.

proposed Rule 14.12 that permit the listing of certain Equity Securities⁸ will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A-3 and 10C-1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Considering the foregoing, the Exchange proposes to adopt Rule 14.12 as set forth below.

Proposed Listing Rules

Proposed Rule 14.12(a) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, ETF Shares that meet the criteria of Rule 14.12.

Proposed Rule 14.12(b) provides that Rule 14.12 is applicable only to ETF Shares and that, except to the extent inconsistent with Rule 14.12, or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 14.12(b) provides further that ETF Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Rule 14.12(b)(1) provides that transactions in ETF Shares will occur throughout the Exchange's trading hours.

⁸ As provided in Rule 14.1(a), the term "Equity Security" means, but is not limited to, common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, ADRs, CVRs, Investment Company Units, Trust Issued Receipts (including those based on Investment Shares), Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Equity-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Portfolio Depositary Receipts, Equity-Linked Debt Securities, and Managed Portfolio Shares. Further, the Exchange now proposes to include the term "Exchange-Traded Fund Shares" to the definition of Equity Security.

Proposed Rule 14.12(b)(2) provides that the minimum price variation for quoting and entry of orders in ETF Shares will be \$0.01.

Proposed Rule 14.12(b)(3) provides that the Exchange will implement and maintain written surveillance procedures for ETF Shares.

Proposed Rule 14.12(c)(1) defines the term “ETF Shares” as shares of stock issued by an Exchange-Traded Fund.⁹

Proposed Rule 14.12(c)(2) defines the term “Exchange-Traded Fund” as having the same meaning as the term “exchange-traded fund” as defined in Rule 6c-11 under the Investment Company Act of 1940.¹⁰

Proposed Rule 14.12(c)(3) defines the term “Reporting Authority” in respect of a particular series of ETF Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of ETF Shares (if the Exchange is trading such series pursuant to UTP) as the official source for calculating and reporting information relating to such series, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares, the net asset value (the “NAV”), index or portfolio value, the current value of the portfolio of securities required to be deposited in connection with issuance of ETF Shares, or other information relating to the issuance, redemption or trading of ETF

⁹ For purposes of this filing, references to a series of Exchange-Traded Fund Shares are referred to interchangeably as a series of Exchange-Traded Fund Shares or as a “Fund” and shares of a series of Exchange-Traded Fund Shares are generally referred to as the “Shares”.

¹⁰ Per Rule 6c-11, an exchange-traded fund means a registered open-end management company: (A) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (B) Whose shares are listed on a national securities exchange and traded at market-determined prices.

Shares. A series of ETF Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.12(d) provides for the initial and continued listing and/or trading of ETF Shares, including trading pursuant to UTP, pursuant to Rule 19b4-(e) under the Act. Proposed Rule 14.12(d)(1) sets forth initial listing criteria applicable to ETF Shares. Specifically, proposed Rule 14.12(d)(1) provides that the requirements of Rule 6c-11 must be satisfied by a series of ETF Shares on an initial and continued listing basis. Such securities must also satisfy the criteria on an initial and, with the exception of proposed subparagraph (d)(1)(A), a continued listing basis. Proposed Rule 14.12(d)(1)(A) provides that for each series, the Exchange will establish a minimum number of ETF Shares required to be outstanding at the time of commencement of trading on the Exchange. However, as noted above, such criteria is not applicable on a continued listing basis. Proposed rule 14.12(d)(1)(B) provides that if an index underlying a series of ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to the investment company issuing an actively managed series of ETF Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Exchange-Traded Fund's portfolio. Additionally proposed rule 14.12(d)(1)(C) provides that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that

makes decisions on the composition, methodology, and related matters of an index underlying a series of ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. For actively managed Exchange-Traded Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

Proposed Rule 14.12(d)(2) provides that each series of ETF Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Rule 14.12(d)(2)(A) provides that the Exchange will consider the suspension of trading in or removal from listing of or termination of unlisted trading privileges for a series of ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940; (ii) if any of the other listing requirements set forth in this Rule 14.12 are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.12(d)(2)(B) provides that upon termination of an investment company, the Exchange will require that ETF Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.12(e), which relates to limitation of Exchange liability, provides that neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

The Exchange does not propose to adopt BZX Rule 14.11(l)(6) because it is not applicable as the Exchange does not currently have any listed products.

Quantitative Standards

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of ETF Shares listed on the Exchange in order to ensure compliance with Rule 6c-11 and the 1940 Act on an ongoing basis. While proposed Rule 14.12 does not include the quantitative requirements applicable to an ETF or an ETF's holdings or underlying index

that are included in Rule 14.2, the Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures and the Exchange's ability to suspend trading or terminate unlisted trading privileges under the proposed Rule 14.12(d)(2)(A). The Exchange will also halt trading in ETF Shares under the conditions specified in Rule 11.16, "Trading Halts Due to Extraordinary Market Volatility." The Exchange believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that will come from Rule 6c-11, specifically the additional flexibility provided to issuers of ETF Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11.¹¹ The Exchange believes that the combination of these factors will act to keep ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of ETF Shares on the Exchange without the inclusion of quantitative standards.¹²

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of ETF Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

¹¹ The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c-11 Release. See Release Nos. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the "Rule 6c-11 Release") at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

¹² The Exchange believes that this applies to all quantitative standards, whether applicable to the portfolio holdings of a series of ETF Shares or the distribution of the ETF Shares.

Trading of ETF Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of ETF Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements.

Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units, among other product types, to monitor trading in ETF Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange, will communicate as needed regarding trading in ETF Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of ETF Shares reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). FINRA also can access data obtained from the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access ("EMMA") system relating to municipal bond trading activity

for surveillance purposes in connection with trading in a series of ETF Shares, to the extent that a series of ETF Shares holds municipal securities.

Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of ETF Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (i) if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940; (ii) if any of the other listing requirements set forth in this Rule 14.12 are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Trading Rules

The Exchange deems ETF Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. ETF Shares will trade on the Exchange throughout the Exchange's trading

hours. As provided in proposed Rule 14.12(b)(2), the minimum price variation for quoting and entry of orders in ETF Shares traded on the Exchange is \$0.01.

(b) Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹³ in general and Section 6(b)(5) of the Act¹⁴ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 14.12 will remove impediments to and perfect the mechanism of a free and open market and national market system.

Specifically, the proposed amendment raises no substantive issues that have not otherwise been considered by the Commission in either the BZX Approval Order or in the context of other similar Exchange Rules. This proposal is substantively similar to the BZX Approval Order, with the exception that the Exchange is only proposing to trade series of ETF Shares pursuant to unlisted trading privileges, while BZX will both list and trade series of ETF Shares. Further, while proposed Rule 14.12(d)(2)(A) provides that the Exchange may terminate unlisted trading privileges and BZX Rule 14.11(l) does not, the proposed rule text is substantially similar to existing Exchange Rules 14.3(g)(2) and 14.11(d)(2)(B) and therefore raises no novel issues.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

The Exchange believes that proposed Rule 14.12 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading ETF Shares on the Exchange provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.12(d) sets forth initial and continued listing criteria applicable to ETF Shares, specifically providing that the Exchange may approve a series of ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided such series of ETF Shares is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 and must satisfy the requirements of this Rule 14.12 on an initial and continued listing basis.

Proposed Rule 14.12(d)(1) provides that initial listing criteria which includes (A) for each series, the Exchange will establish a minimum number of ETF Shares required to be outstanding at the time of commencement of trading on the Exchange; (B) if an index underlying a series of ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to the investment company issuing an actively managed series of ETF Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Exchange-Traded Fund's portfolio; and (C) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the

composition, methodology, and related matters of an index underlying a series of ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. For actively managed Exchange-Traded Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

Proposed Rule 14.12(d)(2) provides that each series of ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 14.12(d)(2)(A) and (B). Proposed Rule 14.12(d)(2)(A) provides that the Exchange will consider the suspension of trading in or removal from listing of or termination of UTP for a series of ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940; (ii) if any of the other listing requirements set forth in this Rule 14.12 are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.12(d)(2)(B) provides that upon termination of an investment company, the Exchange requires that ETF Shares issued in connection with such entity be removed from Exchange listing.

The Exchange further believes that proposed Rule 14.12 is designed to prevent fraudulent and manipulative acts and practices because of the robust surveillances in

place on the Exchange as required under proposed Rule 14.12(b)(3) along with the similarities of proposed Rule 14.12 to the rules related to other securities that are already traded on the Exchange pursuant to UTP and which would qualify as ETF Shares. Proposed Rule 14.12 is based in large part on Rule 14.2 related to the listing and trading of Investment Company Units on the Exchange, which are issued under the 1940 Act and would qualify as ETF Shares after Rule 6c-11 is effective. As such, the Exchange believes that using Rule 14.2 (the “Current ETF Standards”) as the basis for proposed Rule 14.12 is appropriate because they are generally designed to address the issues associated with ETF Shares. The only substantial differences between proposed Rule 14.12 and the Current ETF Standards that are not otherwise required under Rule 6c-11 are as follows: (i) proposed Rule 14.12 does not include the quantitative standards applicable to a fund or an index that are included in the Current ETF Standards; and (ii) proposed Rule 14.12 does not include any requirements related to the dissemination of a fund’s intraday indicative value.¹⁵

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the ETF Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units, among other product types, to monitor trading in ETF Shares. The Exchange or the FINRA, on behalf of the Exchange, will communicate as needed regarding trading in ETF Shares and

¹⁵ For purposes of this filing, the term “intraday indicative value” or “IIV” shall mean an intraday estimate of the value of a share of each series Investment Company Units.

certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of ETF Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of ETF Shares, to the extent that a series of ETF Shares holds municipal securities.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the trading, pursuant to UTP, of ETF Shares that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

Item 6. Extension of Time Period for Commission Action

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act¹⁶ and Rule 19b-4(f)(6)¹⁷ thereunder.

(b) The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange believes that the proposed rule changes would not significantly affect the protection of investors or the public interest and would not impose a burden on competition because it would allow for ETF Shares to trade on the Exchange pursuant to UTP. Specifically, by allowing ETF Shares to trade on the Exchange, market participants would be afforded an additional trading venue option for ETF Shares. Further, trading of ETF Shares on the Exchange would foster competition among trading venues.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

Additionally, the proposal is substantially similar to BZX Rule 14.11(l) with three exceptions. First, the Exchange notes that proposed Rule 14.12(d)(2)(A) does not conform to BZX Rule 14.11(l)(4)(B)(i) as Exchange Rules do not provide for delisting proceedings as provided in BZX Rule 14.11. Second, proposed Rule 14.12(d)(2)(A) provides that the Exchange will consider the termination of UTP for a series of ETF Shares under any of the circumstances provided in paragraphs 14.12(d)(2)(A)(i) through 14.12(d)(2)(A)(iv) while no such provision is provided in BZX Rule 14.11(l).

Nonetheless, the Exchange believes the proposed change will not significantly affect the protection of investors or the public interest and will not impose any significant burden on competition. Specifically, as discussed above, while proposed Rule 14.12(d)(2)(A) provides that the Exchange may terminate unlisted trading privileges and BZX Rule 14.11(l) does not, the proposed rule text is substantially similar to existing Exchange Rules 14.3(g)(2) and 14.11(d)(2)(B) and therefore raises no novel issues. Third, the Exchange does not seek to adopt BZX Rule 14.11(l)(6) because it is not applicable as the Exchange does not currently have any listed products.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange respectfully requests that the Commission waive the operative delay. Waiver of the operative delay is consistent with the protection of investors and the public interest as it would allow for the immediate trading, pursuant to UTP, of ETF Shares on the Exchange and therefore would provide investors with an additional trading venue option.

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(c) Not applicable.

(d) Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed adoption of Rule 14.12 is based on BZX Rule 14.11(l), which sets forth the listing requirements of ETF Shares on BZX.¹⁸ The provisions of proposed rule 14.12 that permit the listing of ETF Shares will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A-3 and 10C-1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission.¹⁹ Therefore, while proposed Rule 14.12 is substantially similar to BZX Rule 14.11(l), the Exchange will not list Managed Fund Shares in connection with the proposed adoption of Rule 14.12.

Proposed Rule 14.12 is substantially similar to BZX Rule 14.11(l) with three differences. First, the Exchange notes that proposed Rule 14.12(d)(2)(A) does not conform to BZX Rule 14.11(l)(4)(B)(i) as Exchange rules do not provide for delisting proceedings as provided in BZX Rule 14.11. Second, proposed rule 14.12(d)(2)(A) provides for the termination of unlisted trading privileges for a series of ETF Shares where BZX Rule 14.11(l) provides no such provision. Last, the Exchange does not seek to adopt BZX Rule

¹⁸ See supra note 5.

¹⁹ See Exchange Rule 14.1(a).

14.11(l)(6) because it is not applicable as the Exchange does not currently have any listed products.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Proposed rule text.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeEDGX-2020-021]

[Insert date]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Adopt Rule 14.12 to Permit the Trading, Pursuant to Unlisted Trading Privileges, of Exchange-Traded Fund Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], Cboe EDGX Exchange, Inc. (the “Exchange” or ““EDGX””) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to adopt Rule 14.12 to permit the trading, pursuant to unlisted trading privileges, of Exchange-Traded Fund Shares. Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a). The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Rule 14.12 to permit the trading, pursuant to unlisted trading privileges ("UTP"), of Exchange-Traded Fund (also referred to as "ETF") Shares,⁵ which substantially conforms to Cboe BZX Exchange, Inc. ("BZX") Rule 14.11(l).⁶ Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Exchange-Traded Fund Shares and proposed Rule 14.12, where applicable.

The Exchange does not currently list any securities as a primary listing market. Consistent with this fact, Exchange Rule 14.1(a) currently states that all securities traded on the Exchange are traded pursuant to UTP and that the Exchange will not list any securities

⁵ ETF Shares means shares of stock issued by an Exchange-Traded Fund. See proposed Rule 14.12(c)(1).

⁶ See Securities and Exchange Act Release No. 88566 (April 6, 2020) 85 FR 20312 (April 10, 2020) (SR-CboeBZX-2019-097) (the "BZX Approval Order").

before first filing and obtaining Commission approval of rules that incorporate qualitative listing criteria and comply with Rules 10A-3⁷ (“Rule 10A-3”) and 10C-1⁸ (“Rule 10C-1”) under the Act. Therefore, the provisions of existing Rules 14.2 through 14.9, 14.11, and proposed Rule 14.12 that permit the listing of certain Equity Securities⁹ will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A-3 and 10C-1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Considering the foregoing, the Exchange proposes to adopt Rule 14.12 as set forth below.

Proposed Listing Rules

Proposed Rule 14.12(a) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, ETF Shares that meet the criteria of Rule 14.12.

⁷ Rule 10A-3 obligates the Exchange to prohibit the initial or continued listing of any security of an issuer that is not in compliance with certain required standards. See 17 CFR 240.10A-3.

⁸ Rule 10C-1 obligates the Exchange to establish listing standards that require each member of a listed issuer’s compensation committee to be a member of the issuer’s board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director. See 17 CFR 240.10C-1.

⁹ As provided in Rule 14.1(a), the term “Equity Security” means, but is not limited to, common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, ADRs, CVRs, Investment Company Units, Trust Issued Receipts (including those based on Investment Shares), Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Equity-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Portfolio Depositary Receipts, Equity-Linked Debt Securities, and Managed Portfolio Shares. Further, the Exchange now proposes to include the term “Exchange-Traded Fund Shares” to the definition of Equity Security.

Proposed Rule 14.12(b) provides that Rule 14.12 is applicable only to ETF Shares and that, except to the extent inconsistent with Rule 14.12, or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 14.12(b) provides further that ETF Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Rule 14.12(b)(1) provides that transactions in ETF Shares will occur throughout the Exchange's trading hours.

Proposed Rule 14.12(b)(2) provides that the minimum price variation for quoting and entry of orders in ETF Shares will be \$0.01.

Proposed Rule 14.12(b)(3) provides that the Exchange will implement and maintain written surveillance procedures for ETF Shares.

Proposed Rule 14.12(c)(1) defines the term "ETF Shares" as shares of stock issued by an Exchange-Traded Fund.¹⁰

Proposed Rule 14.12(c)(2) defines the term "Exchange-Traded Fund" as having the same meaning as the term "exchange-traded fund" as defined in Rule 6c-11 under the Investment Company Act of 1940.¹¹

¹⁰ For purposes of this filing, references to a series of Exchange-Traded Fund Shares are referred to interchangeably as a series of Exchange-Traded Fund Shares or as a "Fund" and shares of a series of Exchange-Traded Fund Shares are generally referred to as the "Shares".

¹¹ Per Rule 6c-11, an exchange-traded fund means a registered open-end management company: (A) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (B) Whose shares are listed on a national securities exchange and traded at market-determined prices.

Proposed Rule 14.12(c)(3) defines the term “Reporting Authority” in respect of a particular series of ETF Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of ETF Shares (if the Exchange is trading such series pursuant to UTP) as the official source for calculating and reporting information relating to such series, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares, the net asset value (the “NAV”), index or portfolio value, the current value of the portfolio of securities required to be deposited in connection with issuance of ETF Shares, or other information relating to the issuance, redemption or trading of ETF Shares. A series of ETF Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.12(d) provides for the initial and continued listing and/or trading of ETF Shares, including trading pursuant to UTP, pursuant to Rule 19b4-(e) under the Act. Proposed Rule 14.12(d)(1) sets forth initial listing criteria applicable to ETF Shares. Specifically, proposed Rule 14.12(d)(1) provides that the requirements of Rule 6c-11 must be satisfied by a series of ETF Shares on an initial and continued listing basis. Such securities must also satisfy the criteria on an initial and, with the exception of proposed subparagraph (d)(1)(A), a continued listing basis. Proposed Rule 14.12(d)(1)(A) provides that for each series, the Exchange will establish a minimum number of ETF Shares required to be outstanding at the time of commencement of trading on the Exchange. However, as noted above, such criteria is not applicable on a continued listing basis. Proposed rule 14.12(d)(1)(B) provides that if an index underlying a series of ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser

shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to the investment company issuing an actively managed series of ETF Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Exchange-Traded Fund's portfolio. Additionally proposed rule 14.12(d)(1)(C) provides that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a series of ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. For actively managed Exchange-Traded Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

Proposed Rule 14.12(d)(2) provides that each series of ETF Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Rule 14.12(d)(2)(A) provides that the Exchange will consider the suspension of trading in or removal from listing of or termination of unlisted trading privileges for a series of ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940; (ii) if any of the other listing requirements

set forth in this Rule 14.12 are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.12(d)(2)(B) provides that upon termination of an investment company, the Exchange will require that ETF Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.12(e), which relates to limitation of Exchange liability, provides that neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

The Exchange does not propose to adopt BZX Rule 14.11(l)(6) because it is not applicable as the Exchange does not currently have any listed products.

Quantitative Standards

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of ETF Shares listed on the Exchange in order to ensure compliance with Rule 6c-11 and the 1940 Act on an ongoing basis. While proposed Rule 14.12 does not include the quantitative requirements applicable to an ETF or an ETF's holdings or underlying index that are included in Rule 14.2, the Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures and the Exchange's ability to suspend trading or terminate unlisted trading privileges under the proposed Rule 14.12(d)(2)(A). The Exchange will also halt trading in ETF Shares under the conditions specified in Rule 11.16, "Trading Halts Due to Extraordinary Market Volatility." The Exchange believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that will come from Rule 6c-11, specifically the additional flexibility provided to issuers of ETF Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11.¹² The Exchange believes that the combination of these factors will act to keep ETF Shares trading near the value of their

¹² The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c-11 Release. See Release Nos. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the "Rule 6c-11 Release") at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

underlying holdings and further mitigate concerns around manipulation of ETF Shares on the Exchange without the inclusion of quantitative standards.¹³

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of ETF Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of ETF Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of ETF Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements.

Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units, among other product types, to monitor trading in ETF Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange, will communicate as needed regarding trading in ETF Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in ETF Shares and certain of their applicable underlying

¹³ The Exchange believes that this applies to all quantitative standards, whether applicable to the portfolio holdings of a series of ETF Shares or the distribution of the ETF Shares.

components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of ETF Shares reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). FINRA also can access data obtained from the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access ("EMMA") system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of ETF Shares, to the extent that a series of ETF Shares holds municipal securities.

Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of ETF Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (i) if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940; (ii) if any of the other listing requirements set forth in this Rule 14.12 are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer

than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Trading Rules

The Exchange deems ETF Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. ETF Shares will trade on the Exchange throughout the Exchange's trading hours. As provided in proposed Rule 14.12(b)(2), the minimum price variation for quoting and entry of orders in ETF Shares traded on the Exchange is \$0.01.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹⁴ in general and Section 6(b)(5) of the Act¹⁵ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 14.12 will remove impediments to and perfect the mechanism of a free and open market and national market system. Specifically, the proposed amendment raises no substantive issues that have not otherwise been considered by the Commission in either the BZX Approval Order or in the context of other similar Exchange Rules. This proposal is substantively similar to the BZX Approval Order, with the exception that the Exchange is only proposing to trade

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(5).

series of ETF Shares pursuant to unlisted trading privileges, while BZX will both list and trade series of ETF Shares. Further, while proposed Rule 14.12(d)(2)(A) provides that the Exchange may terminate unlisted trading privileges and BZX Rule 14.11(l) does not, the proposed rule text is substantially similar to existing Exchange Rules 14.3(g)(2) and 14.11(d)(2)(B) and therefore raises no novel issues.

The Exchange believes that proposed Rule 14.12 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading ETF Shares on the Exchange provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.12(d) sets forth initial and continued listing criteria applicable to ETF Shares, specifically providing that the Exchange may approve a series of ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided such series of ETF Shares is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 and must satisfy the requirements of this Rule 14.12 on an initial and continued listing basis.

Proposed Rule 14.12(d)(1) provides that initial listing criteria which includes (A) for each series, the Exchange will establish a minimum number of ETF Shares required to be outstanding at the time of commencement of trading on the Exchange; (B) if an index underlying a series of ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to the investment company issuing an actively managed

series of ETF Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Exchange-Traded Fund’s portfolio; and (C) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a series of ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. For actively managed Exchange-Traded Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

Proposed Rule 14.12(d)(2) provides that each series of ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 14.12(d)(2)(A) and (B). Proposed Rule 14.12(d)(2)(A) provides that the Exchange will consider the suspension of trading in or removal from listing of or termination of UTP for a series of ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940; (ii) if any of the other listing requirements set forth in this Rule 14.12 are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange

inadvisable. Proposed Rule 14.12(d)(2)(B) provides that upon termination of an investment company, the Exchange requires that ETF Shares issued in connection with such entity be removed from Exchange listing.

The Exchange further believes that proposed Rule 14.12 is designed to prevent fraudulent and manipulative acts and practices because of the robust surveillances in place on the Exchange as required under proposed Rule 14.12(b)(3) along with the similarities of proposed Rule 14.12 to the rules related to other securities that are already traded on the Exchange pursuant to UTP and which would qualify as ETF Shares. Proposed Rule 14.12 is based in large part on Rule 14.2 related to the listing and trading of Investment Company Units on the Exchange, which are issued under the 1940 Act and would qualify as ETF Shares after Rule 6c-11 is effective. As such, the Exchange believes that using Rule 14.2 (the “Current ETF Standards”) as the basis for proposed Rule 14.12 is appropriate because they are generally designed to address the issues associated with ETF Shares. The only substantial differences between proposed Rule 14.12 and the Current ETF Standards that are not otherwise required under Rule 6c-11 are as follows: (i) proposed Rule 14.12 does not include the quantitative standards applicable to a fund or an index that are included in the Current ETF Standards; and (ii) proposed Rule 14.12 does not include any requirements related to the dissemination of a fund’s intraday indicative value.¹⁶

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the ETF Shares in all trading sessions and to deter and

¹⁶ For purposes of this filing, the term “intraday indicative value” or “IIV” shall mean an intraday estimate of the value of a share of each series Investment Company Units.

detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units, among other product types, to monitor trading in ETF Shares. The Exchange or the FINRA, on behalf of the Exchange, will communicate as needed regarding trading in ETF Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of ETF Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of ETF Shares, to the extent that a series of ETF Shares holds municipal securities.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the trading, pursuant to UTP, of ETF Shares that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6)¹⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2020-021 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2020-021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-CboeEDGX-2020-021 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Secretary

¹⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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Rules of Cboe EDGX Exchange, Inc.

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Rule 14.1. Unlisted Traded Privileges

(a) Notwithstanding the requirements for listing set forth in these Rules, the Exchange may extend unlisted trading privileges (“UTP”) to any Equity Security (as defined below) that is listed on another national securities exchange or with respect to which unlisted trading privileges may otherwise be extended in accordance with Section 12(f) of the Exchange Act. Any such security will be subject to all Exchange trading rules applicable to equity securities, unless otherwise noted. The Exchange will not list any Equity Securities. Therefore, the provisions of Rules 14.2 through 14.1[1]2 that permit the listing of Equity Securities other than common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, American Depositary Receipts (“ADRs”), and contingent value rights (“CVRs”) will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rules 10A-3 and 10C-1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. For purposes of this Chapter XIV, the term “Equity Security” means, but is not limited to, common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, ADRs, CVRs, Investment Company Units, Trust Issued Receipts (including those based on Investment Shares), Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Equity-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Portfolio Depositary Receipts, Equity-Linked Debt Securities, [and]Managed Portfolio Shares, and Exchange-Traded Fund Shares.

(b)-(c) No change.

Interpretations and Policies

.01 No change.

14.12. Exchange-Traded Fund Shares

(a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, the shares of Exchange-Traded Funds (“ETF Shares”) that meet the criteria of this Rule 14.12.

(b) Applicability. This Rule 14.12 is applicable only to ETF Shares. Except to the extent inconsistent with this Rule 14.12, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. ETF Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

(1) Transactions in ETF Shares will occur throughout the Exchange's trading hours.

(2) Minimum Price Variance. The minimum price variation for quoting and entry of orders in ETF Shares is \$0.01.

(3) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for ETF Shares.

(c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) ETF Shares. The term "ETF Shares" means shares of stock issued by an Exchange-Traded Fund.

(2) Exchange-Traded Fund. The term "Exchange-Traded Fund" has the same meaning as the term "exchange-traded fund" as defined in Rule 6c-11 under the Investment Company Act of 1940.

(3) Reporting Authority. The term "Reporting Authority" in respect of a particular series of ETF Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of ETF Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares, net asset value, index or portfolio value, the current value of the portfolio of securities required to be deposited in connection with issuance of ETF Shares, or other information relating to the issuance, redemption or trading of ETF Shares. A series of ETF Shares may have more than one Reporting Authority, each having different functions.

(d) Initial and Continued Listing; Unlisted Trading Privileges. The Exchange may approve a series of ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided such series of ETF Shares is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 and must satisfy the requirements of this Rule 14.12 on an initial and continued listing basis.

(1) The requirements of Rule 6c-11 must be satisfied by a series of ETF Shares on an initial and continued listing basis. Such securities must also satisfy the

following criteria on an initial and, except for paragraph (A) below, continued, listing basis:

(A) For each series, the Exchange will establish a minimum number of ETF Shares required to be outstanding at the time of commencement of trading on the Exchange;

(B) If an index underlying a series of ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to the investment company issuing an actively managed series of ETF Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Exchange-Traded Fund's portfolio; and

(C) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a series of ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. For actively managed Exchange-Traded Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

(2) Continued Listing and Trading or Trading Pursuant to Unlisted Trading Privileges. Each series of ETF Shares will be listed and traded or traded pursuant to unlisted trading privileges on the Exchange subject to application of the following continued listing criteria:

(A) Suspension of trading or removal; termination of unlisted trading privileges. The Exchange will consider the suspension of trading in or removal from listing of or termination of unlisted trading privileges for a series of ETF Shares under any of the following circumstances:

(i) if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940;

(ii) if any of the other listing requirements set forth in this Rule 14.12 are not continuously maintained;

(iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or

(iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(B) Termination. Upon termination of an investment company, the Exchange requires that ETF Shares issued in connection with such entity be removed from Exchange listing.

(e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

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